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In The
Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

vs.

ESTATE OF TOMMY SMITH, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Kentucky

BRIEF OF TWENTY LEADING NON-AUTOMOTIVE COMPANIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are twenty leading non-automotive companies that represent a wide spectrum of American businesses. Many of the *amici* are manufacturers, engaged in the production of agricultural supplies, aircraft, chemicals, cigarette lighters, consumer glass products, diesel engines, earthmoving and construction equipment, first aid supplies, garbage trucks, home appliances, industrial equipment, medical devices, personal hygiene products, personal watercraft, pharmaceuticals, pens, plastic products, sporting goods, and truck trailers. Other *amici* are involved in oil and gas exploration, transportation and disposal of hazardous materials, and interstate rail freight transportation. Collectively, the *amici* provide goods and services that are indispensable to consumers and beneficial to the public welfare. Therefore, *amici* are particularly well-suited to explain how the issues presented impact the entire business community.

As the detailed descriptions of the individual companies set forth in the attached Appendix A show, *amici*'s activities are performed in compliance with a wide array of voluntary industry standards and mandatory government regulations. For example, the manufacturing *amici* design and produce their products in accordance with industry customs and standards such as those set by the American National Standards Institute, and in compliance with a

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[1] This brief is submitted with the consent of counsel for all parties. It was authored by *amici* and counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than *amici* or their counsel made any monetary contributions to the preparation or submission of this brief.

complex array of state and federal regulations promulgated by, inter alia, the Consumer Product Safety Commission, the Food and Drug Administration, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Highway Traffic Safety Administration. The non-manufacturer *amici* are similarly engaged in activities such as oil and gas exploration or the transportation of hazardous materials that are subject to extensive environmental laws and regulations. *Amici*'s activities, by their very nature, carry the potential for serious personal injury, despite *amici*'s best efforts to maximize their safety.

Amici believe that the issues raised in Ford's petition in this case ("*Smith*"), and in the companion case of *Romo v. Ford Motor Co.*, 122 Cal. Rptr. 2d 139 (Ct. App. 2002), *petition for cert. filed*, No. 02-1097 (U.S. Jan 21, 2003) ("*Romo*"), affect not only the automotive industry, but all businesses whose activities can potentially cause serious injury. Specifically, *amici* believe that the reasoning of the lower courts in *Romo* and *Smith* conflicts with the reasoning of other opinions and severely undermines the due process protections against excessive punitive damages set forth by this Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996) ("*BMW*").

SUMMARY OF ARGUMENT

The petition in this case, along with the contemporaneously filed petition in *Romo*, explains that the lower courts in both cases effectively nullified the three-guidepost test set forth in *BMW* for reviewing constitutionally excessive punitive damage awards. *Amici* agree

that all the issues raised in the petition merit this Court's attention. The purpose of this brief is to stress two of those issues.

First, *amici* emphasize the importance of the petitioner's argument concerning the proper interpretation of the first *BMW* guidepost: the reprehensibility of the defendant's conduct. Both in *Romo* and in *Smith*, the lower courts reasoned that Ford's conduct was highly reprehensible *per se* because Ford knowingly manufactured a product that could cause serious injury. The lower courts failed to consider important aspects of Ford's conduct that supported Ford's good faith belief that its conduct was lawful. For example, the courts criticized Ford's product design decisions, but disregarded the fact that Ford complied with applicable regulations and industry standards. And the courts criticized Ford for failing to change or recall its products, but disregarded evidence that supported Ford's determination that no change or recall was necessary, such as the absence of any injuries despite years of use (*Romo*), or findings of no defect by prior juries and the National Highway Traffic Safety Administration (*Smith*).

A company that complies with all applicable regulations and industry standards should have some assurance that its conduct will not be deemed highly reprehensible, even if a jury later determines in hindsight that the company is liable for a personal injury. This is especially true in cases where the company operates in a highly regulated environment. The mere occurrence of injury should not be an indicium of reprehensibility. Instead, the focus should be on the defendant's state of mind when the conduct occurred.

As this brief explains, however, companies like the *amici* are constantly faced with the threat of punitive damages under these or similar circumstances. *Amici* respectfully request that this Court grant certiorari and resolve a conflict in the lower courts regarding the proper application of the first *BMW* guidepost. Specifically, *amici* ask this Court to hold that, when applying the first *BMW* guidepost, courts must consider *all* factors bearing on the reprehensibility of the defendant's conduct, including facts showing a good faith basis for the defendant to believe its conduct was lawful.

Second, *amici* emphasize the importance of petitioner's argument concerning the third *BMW* guidepost: comparison of the punitive damage award to statutory civil and criminal penalties for comparable misconduct. This Court explained in *BMW* that reviewing courts should accord "substantial deference" to statutory penalties because they constitute legislative determinations of the appropriate sanctions for misconduct. Nonetheless, as the petitions explain, the lower courts in *Romo* and *Smith* declined to compare each punitive damage award to the applicable statutory penalties for similar misconduct. The *Romo* court declared the third *BMW* guidepost inapplicable because Ford's conduct arguably was punishable by imprisonment. The *Smith* court looked only to other punitive damage awards instead of deferring to *legislatively* established penalties.

Amici will demonstrate that giving the third *BMW* guidepost short shrift is a national trend reaching epidemic proportions. Appendix B to this brief compiles information about federal and state appellate cases applying *BMW* to punitive damage awards of $1 million or more. Appendix B demonstrates that courts are routinely

affirming multi-million dollar punitive damage awards without giving any weight to *BMW*'s third guidepost.

Amici respectfully request that this Court grant certiorari and end the pervasive disregard of the third guidepost. Specifically, *amici* ask this Court to explain that courts cannot disregard the third guidepost when legislatively established penalties for comparable misconduct are small or non-existent. To the contrary, in such cases, courts should treat the third guidepost as a meaningful limitation on the size of a punitive damage award, because the applicable statutory penalties afforded no fair notice of a massive monetary sanction.

STATEMENT OF THE CASE

Amici hereby adopt and incorporate by reference the Statement of the Case set forth in Petitioner's Brief.

ARGUMENT

I.

THE MISAPPLICATION OF *BMW*'S "REPREHENSIBILITY" GUIDEPOST EXPOSES BUSINESSES TO ENORMOUS PUNITIVE DAMAGE CLAIMS AND AWARDS.

In both *Romo* and *Smith*, the lower courts failed to meaningfully apply the first *BMW* guidepost: the degree of reprehensibility of Ford's conduct. Instead of examining Ford's actual conduct in choosing a particular product design, the courts simply observed that Ford knowingly made a product with a potential for causing serious injury,

and concluded that this conduct was sufficiently reprehensible to support an enormous punitive damage award.

Amici are deeply concerned by the reprehensibility discussion in *Romo* and *Smith*. As explained more fully in the *amici curiae* brief filed by the Product Liability Advisory Council, et al., *Romo* and *Smith* confuse intentional conduct (intentionally manufacturing a product that is involved in an injury) with intentional harm (intentional injury), thereby exposing all companies whose activities may cause personal injury to enormous punitive damage awards. Many of the *amici* are manufacturers who make a wide variety of products, both for individual and industrial consumers. Most of these products, by their very nature, carry the potential for personal injury. When a product is sold to millions of consumers, even the tiniest probability of injury may result in a large number of injuries. The National Safety Council's annual publication of injury information in the United States reports literally thousands of annual injuries associated with such everyday products as shoes, coins, luggage, skateboards, sleds, hand saws, hammers, drills, pliers, wire cutters, wrenches, screwdrivers, batteries, household containers and packaging, bottles, jars, tableware, scissors, trash baskets, beds, tables, chairs, ladders, rugs, toilets, mirrors, bathtubs, showers, nails, screws, windows, refrigerators, irons, vacuum cleaners, and fans. National Safety Council, Injury Facts 134 (1999 ed.).

Other *amici* are not manufacturers, but similarly engage in activities that, although beneficial, have the potential for causing personal injury, such as oil and gas exploration and the transportation of hazardous materials. If merely manufacturing a product or engaging in an activity with a potential for causing serious injury is, in

and of itself, highly reprehensible, then the *BMW* reprehensibility guidepost will never constrain excessive punitive damage awards in cases against companies like the *amici*. They will be vulnerable to enormous punitive damage awards whenever serious injury occurs, despite the impossibility of making any product injury-proof in all circumstances of use, and despite manufacturers' inability, once they have sold a product, to control the circumstances of use.

Amici believe that *Romo* and *Smith* merit this Court's review because they are extreme examples of the disregard of the reprehensibility guidepost. Not only was there no showing of conscious disregard for safety, but the lower courts ignored *multiple* circumstances showing diminished or no reprehensibility. First, with respect to Ford's product design, the courts ignored Ford's compliance with industry customs and regulatory safety standards. Second, with respect to Ford's alleged failure to change or recall its products, the courts ignored the fact that the product was widely used with no evidence of other injuries (*Romo*), and the fact that juries and administrative bodies had found the product not defective (*Smith*). The evidence affirmatively indicated that Ford, like the defendant in *BMW*, had a good faith basis for believing its conduct was lawful. *See BMW*, 517 U.S. at 576-79.

Although *Romo* and *Smith* are extreme examples, they are not the only examples. *Amici* constantly face cases in which they are subjected to or threatened with punitive damages under some of the same circumstances.

For example, in 1997, *amicus* CSX Transportation ("CSXT") was assessed with a then-unprecedented *$2.5 billion* in punitive damages by a New Orleans jury in

connection with a tank car fire that occurred after the car was left at CSXT's facility. CSXT's allegedly "reprehensible" conduct was its failure to discover that the tank car was leaking a combustible substance. However, in affirming a remitted $850 million punitive damage award, the Louisiana Court of Appeal gave no weight at all to the undisputed evidence that CSXT's tank car inspection practices conformed with all federal and other legal requirements, were fully consistent with industry standards of good practice, had never resulted in a tank car accident at the facility except for the accident at issue, and that CSXT had been commended by the New Orleans City Council for its conduct in connection with the fire. *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d 364, 373, 375 (La. Ct. App. 2001), *petition for cert. dismissed per stipulation*, Louisiana Supreme Court No. 2001-C-2485.

ExxonMobil recently was assessed *$1 billion* in punitive damages in a case involving a parcel of land that allegedly was contaminated with a naturally occurring radioactive byproduct of oil drilling. *See Grefer v. Alpha Technical*, No. 97-15004 (La. Civ. Dist. Ct.). The Louisiana Department of Environmental Quality determined that there were no emissions of radioactive materials in the air or ground, and that the site was not a hazard to neighborhood residents, but the jury awarded $1 billion and the trial court denied ExxonMobil's posttrial motions. That case is currently pending on appeal in Louisiana state court. The award should be reversed under a proper application of *BMW*, but ExxonMobil is concerned that the reasoning of *Romo* and *Smith* could undermine the due process protections set forth in *BMW*.

In *Waddill v. Anchor Hocking, Inc.*, 27 P.3d 1092 (Or. Ct. App. 2001), *petition for cert. filed*, No. 02-370 (U.S. Sept. 3, 2002), Anchor Hocking was assessed $1 million in punitive damages for failing to warn that a glass fishbowl might break. *Id.* at 1093-94. In reviewing the award under *BMW*, the Oregon Court of Appeals discussed that Anchor Hocking had never received any civil or criminal punishment relating to its manufacture of fishbowls. *Id.* at 1098-99. (The court did not discuss that no civil or criminal penalties exist for the conduct at issue and that the nearest comparable penalties are small.) This should have led the court to conclude that Anchor Hocking neither deserved punishment nor had fair notice of a $1 million punishment; instead, as in *Romo*, the court cited the absence of any civil or criminal punishment as grounds for *affirming* the award. *Id.*

Other *amici* have been threatened with enormous punitive damages in cases involving some of the same elements appearing in *Romo* and *Smith*. For example, Whirlpool recently was sued for an alleged defect in a dishwasher that supposedly caused a fire. The suit sought punitive damages, even though the dishwasher complied with all industry and Underwriters Laboratory standards and was subjected to extensive preproduction and production testing. *See Trinidad v. Whirlpool Corp.*, No. CIV 00-1435 (D. N.M.). Great Dane Trailers faces one punitive damage lawsuit after another alleging that the rear impact guards on its truck trailers are either too strong or not strong enough, even though the guards comply with National Highway Traffic Safety Administration regulations, as well as voluntary industry safety guidelines. *See, e.g., Rapp v. Singh*, 152 F. Supp. 2d 694, 696-98 (E.D. Pa. 2001). Bombardier, Inc. repeatedly faces punitive damage lawsuits alleging that the steering systems on its personal

watercraft are defective, even though those systems fully comply with U.S. Coast Guard safety requirements. *See, e.g., Barnett v. Bombardier, Inc.*, No. 00-5726-L (Tex. 9th Jud. Dist.). These companies have prevailed in these cases thus far, but they face the prospect of successive lawsuits based on the same kinds of allegations, and will be at perpetual risk of punitive damages under *Romo* and *Smith*.

Some of the *amici* are pharmaceutical companies concerned about the threat of enormous punitive damages for alleged defects in drugs, even though the drugs have been subjected to extensive testing and have been approved by the Food and Drug Administration. Such lawsuits include the recent claim for $560 million in compensatory and punitive damages against Bayer for alleged defects in the anticholesterol drug Baycol. *See* Melody Petersen, *Bayer Cleared of Liability in a Lawsuit Over a Drug*, N.Y. Times, Mar. 19, 2003 at C1. A jury cleared Bayer of all liability, but the mere possibility that a $560 million award *could* be imposed and upheld caused Bayer's stock to drop over thirty-seven percent. *Id.* Despite Bayer's win, the plaintiffs' counsel has publicly declared that this is just the beginning of a series of lawsuits in various jurisdictions across the country. *Id.*

Similarly, the *amici* who make heavy equipment are concerned that, under the reasoning of *Romo* and *Smith*, they may face the same predicament as Crown Equipment Corporation, which was recently assessed with $1.25 million in punitive damages for alleged defects in a stand-up lift truck. *McEuin v. Crown Equip. Corp.*, No. CV-97-00365 (D. Or.), *appeal docketed*, No. 00-36043 (CA9 2001). The evidence at trial showed that the design met universally followed industry practices and complied with standards

promulgated by the U.S. military, the American National Standards Institute, and the Occupational Safety and Health Administration. Despite all of this evidence, the trial court denied Crown Equipment's posttrial motions. The case currently is pending before the U.S. Court of Appeals for the Ninth Circuit.

Finally, many businesses face similar problems in the context of current asbestos litigation, where companies that did not manufacture asbestos, but merely used asbestos-containing materials in their factories decades ago, are vulnerable to enormous punitive damages. *See, e.g., U.S. Steel Loses Asbestos Lawsuit*, L.A. Times, Mar. 31, 2003 at C1 (discussing a $200 million punitive damage award based on U.S. Steel's use of asbestos-containing insulation in one of its plants).

In sum, *amici* all are affected by the issues raised in *Romo* and *Smith* regarding the proper application of the reprehensibility guidepost in cases involving serious personal injury. *Amici* respectfully request that this Court grant certiorari to clarify that the existence of serious personal injury does not make a company's conduct highly reprehensible *per se*. To determine whether the defendant's conduct was highly reprehensible, courts must consider a variety of factors, including whether the risk of injury was unreasonable, whether the defendant understood the risk before engaging in the conduct, whether the defendant consciously disregarded or actively concealed the risk for the purpose of causing harm, whether the defendant complied with applicable regulations and industry standards, and whether juries or regulatory bodies had previously determined that the defendant's conduct was not punishable.

II.

CONFUSION ABOUT THE PROPER INTERPRETATION OF *BMW*'S "CIVIL AND CRIMINAL PENALTIES" GUIDEPOST HAS BECOME EPIDEMIC.

As the petitions explain, the lower courts in *Romo* and *Smith* practically ignored the third *BMW* guidepost: comparison of the amount of punitive damages with civil and criminal penalties for comparable misconduct. This is not unusual. State and federal courts are badly split on the proper application of the third *BMW* guidepost, with many courts simply choosing to ignore it altogether.

This Court explained in *BMW* that, when applying the third guidepost, appellate courts "should accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue." 517 U.S. at 583 (internal quotations omitted). This concept, which was not part of the traditional post-verdict review of punitive damages prior to *BMW*, was one of the most significant aspects of the *BMW* opinion. *See* Paul M. Sykes, Note, *Marking a Road to Nowhere? Supreme Court Sets Punitive Damages Guideposts in* BMW v. Gore, 75 N.C. L. Rev. 1084, 1112 (1997) (stating that the third guidepost, unlike the others, "adds a new tool to the toolchests of lower courts"). *But see Aken v. Plains Elec. Generation & Transmission Coop., Inc.*, 49 P.3d 662, 671-72 (N.M. 2002) (criticizing this Court's adoption of the third guidepost and describing it as the "least important indicium" of excessiveness).

Unfortunately, since *BMW*, most appellate courts have not accorded *any* deference, much less substantial deference, to legislative judgments concerning the appropriate

sanctions for misconduct. This trend continues even after this Court's decision two years ago in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), which adopted a *de novo* standard of review for application of the *BMW* guideposts and specifically observed that the third *BMW* guidepost, compared to the first two, "seems more suited to the expertise of appellate courts." *Id.* at 440.

Appendix B to this brief lists the federal and state appellate cases that have considered the constitutionality under *BMW* of a punitive damage award of $1 million or more.[2] Nearly forty percent of these cases (39 out of 101) did not even state whether legislatively established penalties existed for comparable misconduct, let alone accord these penalties substantial deference. Many of these cases upheld seven-figure punitive awards against constitutional attack under *BMW* without even *mentioning* the third guidepost.[3]

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[2] The problem discussed in this section is not limited to the cases with the largest punitive awards. Many appellate courts have affirmed awards under $1 million without discussing statutory penalties. *See, e.g., Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 146 F.3d 983, 993-94 (CADC 1998) (upholding $100,000 award); *Routh Wrecker Serv., Inc. v. Washington*, 980 S.W.2d 240, 244-45 (Ark. 1998) (upholding $75,000 award); *Southeastern Sec. Ins. Co. v. Hotle*, 473 S.E.2d 256, 259, 261 (Ga. Ct. App. 1996) (upholding $65,000 award); *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594-95 (Iowa 1999) (upholding $30,000 award); *Garcia v. Coffman*, 946 P.2d 216, 224-25 (N.M. Ct. App. 1997) (upholding $50,000 award); *Bardonaro v. Gen. Motors Corp.*, 2000 Ohio App. LEXIS 3479, at *16-*18 (Ct. App. Aug. 4, 2000) (unreported) (upholding $100,000 award).

[3] *See, e.g., Clark v. Chrysler Corp.*, 310 F.3d 461, 481-82 (CA6 2002); *Cable & Computer Tech. Inc. v. Lockheed Sanders Inc.*, 52 Fed. Appx. 20, 23 (CA9 2002); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235,

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Nearly twenty percent (20 out of 101) of the cases in Appendix B acknowledged that statutory penalties existed, but chose to ignore them. Some courts decided to ignore statutory penalties that they perceived to be too low.[4] Other courts ignored statutory penalties because no government agency ever sought to impose them against the defendant. *See Lance, Inc. v. Ramanauskas*, 731 So. 2d 1204, 1219 (Ala. 1999); *Anchor Hocking*, 27 P.3d at 1099; *see also Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493, 507 (S.D. 1997). In *Romo*, the court actually concluded that the absence of any prior punishment made a $290 million punitive damage award *more* acceptable. *Romo,* Pet. App. 36a; *see also Anchor Hocking*, 27 P.3d at 1099. Such decisions perversely use legislative judgments that particular conduct does not deserve a heavy penalty as a reason to disregard that judgment and as a license to impose heavy punitive damages.

1252-54 (CA10 2000); *Arrow Int'l, Inc. v. Sparks*, 2003 Ark. App. LEXIS 107, at *19-*20 (Feb. 12, 2003) (unreported); *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89, 114, 116-18 (Ct. App. 1999); *Owens-Corning Fiberglas Corp. v. Rivera*, 683 So. 2d 154, 155, 156 (Fla. Dist. Ct. App. 1996); *Bibb Distrib. Co. v. Stewart*, 519 S.E.2d 455, 459 (Ga. Ct. App. 1999); *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 147-48 (Iowa 1996); *Cooper Tire & Rubber Co. v. Tuckier*, 826 So. 2d 679, 690-91 (Miss. 2002); *State Farm Mut. Auto. Ins. Co. v. Grimes*, 722 So. 2d 637, 646-47 (Miss. 1998); *Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575, 589 (Mo. Ct. App. 2001); *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1053 & n.16 (Nev. 2000); *Lakin v. Senco Prods., Inc.*, 987 P.2d 463, 476 (Or. 1999).

[4] *See, e.g., Union Sec. Life Ins. Co. v. Crocker*, 709 So. 2d 1118, 1122 (Ala. 1997); *Ford Motor Co. v. Sperau*, 708 So. 2d 111, 122 (Ala. 1997); *Life Ins. Co. of Ga. v. Johnson*, 701 So. 2d 524, 531 (Ala. 1997); *BMW of N. Am., Inc. v. Gore*, 701 So. 2d 507, 514 (Ala. 1997); *see also Aken*, 49 P.3d at 672 (deeming low penalties "not helpful" when other guideposts weighed in favor of affirmance).

Some courts, like the Kentucky Supreme Court in *Smith*, 83 S.W.3d at 495-96, ignored comparable statutory penalties and looked only at jury awards in similar cases.[5] Since enormous punitive damage awards were precisely the problem this Court was seeking to rectify when it delineated its three guideposts, reliance on those awards to justify other awards is circular and illogical, effectively rendering the third guidepost meaningless.

Other courts have declared the third guidepost inapplicable when the comparable penalties included imprisonment. *See Romo*, Pet. App. 39a; *Williams v. Philip Morris Inc.*, 48 P.3d 824, 842 (Or. Ct. App. 2002) (observing in connection with plaintiff's argument that defendant's conduct was punishable by imprisonment: "[w]e do not believe that [the third guidepost] plays a major role one way or the other"). Since many torts also constitute crimes punishable by imprisonment, this analysis, too, tends to render the third guidepost meaningless.

Where there are no statutory penalties for comparable misconduct, some appellate courts have simply declared the third guidepost inapplicable.[6] A few courts have

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[5] *See, e.g., O'Neill v. Gallant Ins. Co.*, 769 N.E.2d 100, 115 (Ill. App. Ct. 2002) ("Finally, the jury's award is in line with punishment meted out in comparable cases."); *Gregory v. Shelby County, Tennessee*, 220 F.3d 433, 445 (CA6 2000) ("Finally, the third factor provides little guidance in this determination as the parties have provided no evidence of similar jury verdicts on this issue."); *Harris v. Soley*, 756 A.2d 499, 509 (Me. 2000) (acknowledging third guidepost but discussing only cases, not statutory penalties); *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155, 177-79 (Mo. Ct. App. 1997) (same).

[6] *See, e.g., Ford Motor Co. v. Ammerman*, 705 N.E.2d 539, 562-63 (Ind. Ct. App. 1999) ("In this case however there is no comparable civil statutory penalty. . . . The same is true for criminal penalties. Thus this

(Continued on following page)

reached the opposite conclusion, and treated the third guidepost as an indicium of excessiveness when the legislature has not prescribed any penalties for the conduct at issue. *See, e.g.*, *FDIC v. Hamilton*, 122 F.3d 854, 862 (CA10 1997); *Langmead v. Admiral Cruises, Inc.*, 696 So. 2d 1189, 1194 (Fla. Dist. Ct. App. 1997).

In sum, the lower appellate courts are hopelessly conflicted about the proper interpretation of the third guidepost. The vast majority have simply ignored it or given it short shrift. Those that have considered the third guidepost cannot agree on how it should be applied when statutory penalties are small or non-existent.

Amici respectfully request that this Court grant certiorari to resolve this confusion. Specifically, *amici* ask this Court to explain that the third *BMW* guidepost is essential, not optional, and that when legislatively established penalties for comparable misconduct are small or nonexistent, this guidepost weighs against the imposition of a large punitive damage award.

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portion of the *Gore* indicia of excessiveness is not applicable.") (footnote omitted); *Paracelsus Health Care Corp. v. Willard*, 754 So. 2d 437, 445 (Miss. 1999) (disposing of third guidepost by stating "there are no other sanctions which would be imposed under the facts of this case"); *Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 641 N.W.2d 504, 517 (Wis. Ct. App. 2002) ("[W]hen a legislature has not prescribed penalties for the type of conduct engaged in by the defendant, this third guidepost becomes immaterial."), *rev. granted*, 653 N.W.2d 888 (Wis. 2002); *see also Aken*, 49 P.3d at 672 (noting that this Court has been criticized by commentators for failing to " 'give any guidance as to what to do if there are *not* any' " statutory penalties for comparable misconduct).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

STATEMENTS OF INTEREST OF *AMICI CURIAE*

Allergan, Inc.

Allergan, Inc., headquartered in Irvine, California, is a global health care company that develops and commercializes specialty pharmaceutical products for the opthalmic, neurological, dermatological and other specialty markets. The company is a pioneer in specialty pharmaceutical research, targeting products and technologies related to specific disease areas such as glaucoma, retinal disease, dry eye, psoriasis, acne, photodamage, movement disorders, metabolic disease and various types of cancer. Botox® (also known as Botox® Cosmetic) is currently the company's largest product in terms of sales volume and is widely accepted as the standard therapy for treating neuromuscular disorders and facial lines. Botox® Cosmetic was approved in April 2002 by the U.S. Food and Drug Administration ("FDA") for the temporary treatment of moderate to severe brow furrow lines in adults age sixty-five or younger.

Allergan's pharmaceutical products and biologics are subject to extensive pre- and post-market regulation by state agencies and the FDA, including regulations that govern the testing, manufacturing, safety, efficacy, labeling, storage, record keeping, advertising and promotion of products under the Federal Food, Drug and Cosmetic Act and the Public Health Services Act. Approval by the FDA of a New Drug Application is required prior to marketing a new drug, and approval of a Biologics License Application is required before a biologic may be legally marketed in the United States. The FDA may withdraw approval if compliance with the pre- and post-market regulatory standards is not maintained or if problems occur after the

product reaches the marketplace. The FDA has broad post-market regulatory and enforcement powers, including the authority to levy fines and civil penalties, suspend or delay issuance of approvals, seize or recall products, or withdraw approvals.

The Anchor Hocking Company

Founded in Lancaster, Ohio at the turn of the last century, The Anchor Hocking Company is now a leading producer of consumer glass products, including a wide range of glass tableware and containers.

BASF Corporation

BASF Corporation, the U.S. subsidiary of BASF AG, one of the world's largest chemical companies, produces a wide range of high-performance products, including high-value chemicals, plastics, colorants, pigments, automotive and industrial coatings and agricultural products, which it provides to a wide variety of industries, including the detergent, printing, coating, leather, automotive, oil, and textile industries. BASF Corp. must comply with a broad range of regulatory controls on the testing, manufacture, and marketing of many of its products. In particular, chemical companies have become subject to increasingly stringent legislation and regulations related to occupational health and safety, product registration, and environmental protection.

Bell Sports Corporation

Bell Sports Corporation is the leading manufacturer and marketer of bicycle helmets worldwide and a leading

supplier of a broad line of bicycle accessories in North America. Bell Sports is also a supplier of in-line skating, snowboarding, snow skiing, and water sport helmets. Over its history, Bell Sports has developed a reputation for innovation, design, quality, and safety. Since its founding, Bell Sports has engaged in the manufacture and sale of bicycle helmets, bicycle accessories, auto racing helmets, and motorcycle helmets, but in recent years has elected to refocus its operations on the growing bicycle helmet and accessory business. Bell Sports is subject to many federal, state, and local requirements relating to the protection of the environment.

BIC Corporation

BIC Corporation, headquartered in Milord, Connecticut, is a world leader in stationery products, lighters, and shavers. Its products are distributed in a variety of retail locations from local food and tobacco shops, stationery stores, supermarkets, office retail outlets, superstores, mass merchandisers, and warehouse clubs. Every day the world over, consumers buy: twenty-one million BIC stationery products, four million BIC lighters, and ten million BIC shavers. BIC products are present in five contintents and in more than 160 countries. BIC is the market leader in disposable lighter design, manufacture, and sales and is the only U.S. manufacturer of disposable lighters.

BIC has historically been involved in product liability litigation where claimants have asserted that its lighters are defective. BIC complies with varied government regulations and industry standards.

Bombardier, Inc.

Bombardier, Inc. is a diversified corporation composed of autonomous operating groups that manufacture regional, business and amphibious aircraft, rail transportation systems, and recreational vehicles.

Caterpillar

Caterpillar manufactures a wide range of earthmoving, mining and construction equipment used to build roads, dams, homes, bridges, and other infrastructure. Caterpillar is also the world's largest manufacturer of medium speed engines and high speed diesel engines.

CSX Transportation, Inc.

CSX Transportation, Inc. is the largest rail network in the eastern United States, providing rail freight transportation over a network of more than 23,000 miles in twenty-three states, the District of Columbia, and two Canadian provinces. CSX Transportation is a wholly owned subsidiary of CSX Corporation, which owns other transportation businesses, including an intermodal and trucking company, a container-freight terminal company, and a domestic container-shipping company. CSX Transportation's activities are comprehensively regulated pursuant to the Federal Railroad Safety Act.

The Dow Chemical Company

The Dow Chemical Company ("Dow") is a leading science and technology company that provides innovative chemical, plastic, and agricultural products and services to a wide range of markets that are vital to human progress,

including food, transportation, health and medicine, personal and home care, and building and construction. Dow, like other chemical companies, is subject to increasingly stringent legislation and regulations related to occupational health and safety and environmental protection.

Eaton Corporation

Eaton Corporation, headquartered in Cleveland, Ohio, is a global, diversified, industrial manufacturer of fluid power, electrical distribution, automotive power train and truck drive train systems used to run aerospace systems, off-highway agricultural and construction vehicles, industrial equipment, and passenger cars and trucks.

Eli Lilly and Company

Eli Lilly and Company ("Lilly") is a leader in developing pharmaceutical products, in recent years introducing important new drugs for the treatment of cancer, schizophrenia, osteoporosis, diabetes, cardiovascular complications, and severe sepsis. Lilly introduced the first commercially available insulin product for the treatment of diabetes in 1923 and revolutionized the treatment of depression with the introduction of Prozac® in the late 1980s. The introduction and marketing of Lilly's pharmaceutical products are broadly regulated by the FDA.

ExxonMobil Corporation

ExxonMobil Corporation's principal business is energy, including the exploration for and production of

crude oil and natural gas, the manufacture and transportation of petroleum products, and the sale of crude oil, natural gas, and petroleum products. ExxonMobil's activities are governed by numerous environmental laws and regulations.

Great Dane Limited Partnership

Great Dane Limited Partnership is the largest manufacturer, in terms of total revenues, of truck trailers and intermodal containers and chassis in the United States. Great Dane's principal products include dry freight vans, refrigerated vans, platform trailers, and specialized intermodal containers and chassis used to transport raw materials, industrial supplies, agricultural produce, refrigerated foods, finished goods, electronic equipment, machinery, and steel to warehouses, manufacturing plants, and retail stores. Great Dane's products are subject to regulation by the National Highway Traffic Safety Administration.

Heil Company

Heil Company is a leading manufacturer of front, rear, and side loading trucks used to collect and recycle waste from business and industry, as well as from residential customers.

Johnson & Johnson

Johnson & Johnson is the world's most comprehensive and broadly-based manufacturer of health care products for the consumer, pharmaceutical, and professional markets. Johnson & Johnson's worldwide business is divided into

three segments: Consumer, Pharmaceutical, and Medical Devices and Diagnostics. The Consumer segment's principal products are personal care products, including nonprescription drugs, adult skin and hair care products, baby care products, oral care products, first aid products, women's health products, and nutritional products. Pharmaceutical segment products include antifungal, anti-infective, cardiovascular, contraceptive, dermatology, gastrointestinal, hematology, immunology, neurology, oncology, pain management, psychotropic (central nervous system), and urology treatments. The Medical Devices and Diagnostics segment includes wound care and surgical sports medicine products, as well as disposable contact lenses. Most of Johnson & Johnson's business is subject to the broad regulatory powers of the FDA, which requires increased amounts of testing and documentation prior to the approval and introduction of new drugs and devices.

Monsanto Company

Monsanto Company is a leading global provider of agricultural products and integrated solutions to improve farm productivity and food quality. Monsanto products range from Roundup herbicide to high quality brand name seeds for important food crops such as wheat, soybean, corn, and grain.

Novartis Pharmaceuticals Corporation

Novartis Pharmaceuticals Corporation researches, develops, manufactures, and markets leading innovative prescription drugs used to treat a number of diseases and conditions, including central nervous system disorders, organ transplantation, cardiovascular diseases, dermatological

diseases, respiratory disorders, cancer, and arthritis. The company's mission is to improve people's lives by pioneering novel healthcare solutions. Prescription drugs are subject to broad regulation by the FDA.

Located in East Hanover, New Jersey, Novartis Pharmaceuticals Corporation is an affiliate of Novartis AG, a world leader in healthcare with core businesses in pharmaceuticals, consumer health, generics, eye-care, and animal health.

Unocal Corporation

Unocal Corporation, the parent company of the Union Oil Company of California, is one of the world's leading independent oil and gas exploration, development, and production companies. Unocal's activities are subject to extensive federal, state, and local laws.

Whirlpool Corporation

Whirlpool Corporation is the world's leading manufacturer and marketer of major home appliances. The company's principal products are home laundry appliances, home refrigerators and freezers, home cooking appliances, home dishwashers, room air-conditioning equipment, mixers, and other small household appliances. Whirlpool has been the principal supplier of home laundry appliances to Sears Roebuck and Company under the Kenmore brand name for over eighty years. Whirlpool's manufacturing facilities are subject to numerous environmental laws and regulations. Whirlpool's products, like those of other appliance manufacturers, are subject to regulation by the Consumer Product Safety Commission.

Wilbur-Ellis Company

Incorporated in 1921, Wilbur-Ellis Company is an international marketer and distributor of agricultural and industrial products. A distributor for major chemical companies, Wilbur-Ellis sells animal feed, fertilizer, insecticides, seeds, and machinery throughout North America.

APPENDIX B

Appellate Cases Considering the Constitutionality Under *BMW* of a Punitive Award of $1 Million or More

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
3d Circuit *Inter Med. Supplies, Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446 (CA3 1999)			
$100.6 million	Unfair competition	$500,000 or $1.5 million; disregarded as unhelpful	$1 million
6th Circuit *Clark v. Chrysler Corp.*, 310 F.3d 461 (CA6 2002)			
$3 million	Products liability	Not discussed	$3 million
McHugh v. Olympia Entm't, Inc. 37 Fed. Appx. 730 (CA6 2002)			
$1.2 million	Assault, civil rights violation (minor injuries)	Not discussed	$1.2 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Gregory v. Shelby County, Tennessee, 220 F.3d 433 (CA6 2000)			
$2.2 million	Violation of prisoner's civil rights (death)	Not discussed	$2.2 million
8th Circuit *Morse v. S. Union Co.*, 174 F.3d 917 (CA8 1999)			
$6.25 million	Employment discrimination	Not discussed	$400,000
Watkins v. Lundell, 169 F.3d 540 (CA8 1999)			
$3.5 million	Fraudulent inducement of contract	$10,000	$940,000
Denesha v. Farmers Ins. Exch., 161 F.3d 491 (CA8 1998)			
$4 million	Employment discrimination	Not discussed	$700,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
EEOC v. HBE Corp., 135 F.3d 543 (CA8 1998)			
$4.8 million	Employment discrimination	Not discussed	$480,000
Kim v. Nash Finch Co., 123 F.3d 1046 (CA8 1997)			
$7 million	Employment discrimination	$300,000	$300,000
Kimzey v. Wal-Mart Stores, Inc., 107 F.3d 568 (CA8 1997)			
$50 million	Sexual harassment	$300,000 (federal statute); disregarded as inapplicable to state law claim	$350,000
9th Circuit *Leatherman Tool Group, Inc. v. Cooper Indus., Inc.*, 285 F.3d 1146 (CA9 2002) (on remand)			
$4.5 million	Trade dress infringement	Existence of statutory penalties discussed, but amount not mentioned	$500,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Cable & Computer Tech. Inc. v. Lockheed Sanders Inc., 52 Fed. Appx. 20 (CA9 2002)			
Two awards of $25.7 million	Fraud	Not discussed	Two awards of $12.8 million
In re Exxon Valdez, 270 F.3d 1215 (CA9 2001)			
$5 billion	Oil spill (injury to fishing interests)	$200,000 or double the amount of harm caused	Vacated & remanded
Swinton v. Potomac Corp., 270 F.3d 794 (CA9 2001)			
$1 million	Racial harassment	$300,000	$1 million
Demendoza v. Huffman, 1 Fed. Appx. 665 (CA9 2001)			
$1.1 million	Abuse of process, fraud	Not discussed	$550,000
Ace v. Aetna Life Ins. Co., 139 F.3d 1241 (CA9 1998)			
$16.5 million	Insurance bad faith	$500,000	Vacated & remanded

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
VisionQuest Nat'l, Ltd. v. Marimed Found., 1998 U.S.App. LEXIS 15340 (CA9 July 6, 1998) (unreported)			
$1.75 million	Tortious breach of contract	Not discussed	$1.75 million
Guzman v. Tower Dev., Inc., 1997 U.S. App. LEXIS 36006 (CA9 Dec. 19, 1997) (unreported)			
$4 million	Fraud, conversion	None; guidepost disregarded because no penalties found	$4 million
10th Circuit *Hampton v. Dillard Dep't Stores*, 247 F.3d 1091 (CA10 2001)			
$1.1 million	Interference with contract	None; guidepost disregarded because no penalties found	$1.1 million
Bielicki v. Terminix Int'l Co., 225 F.3d 1159 (CA10 2000)			
$2.04 million	Negligence	$30,000 and one year in prison (federal); $1,000 and revocation of license (state)	$2.04 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Smith v. Ingersoll-Rand Co., 214 F.3d 1235 (CA10 2000)			
$17.46 million	Products liability (amputation)	Not discussed	$17.46 million
United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207 (CA10 2000), *aff'd*, 532 U.S. 588 (2001)			
$58.5 million	Securities fraud	$2,500,000 (federal) and $750,000 (state)	$58.5 million
Deters v. Equifax Credit Info. Servs., Inc., 202 F.3d 1262 (CA10 2000)			
$1 million	Sexual harassment	$300,000	$295,000
FDIC v. Hamilton, 122 F.3d 854 (CA10 1997)			
$1.2 million	Fraud	None; treated as mitigating factor	$264,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Klein v. Grynberg, 1997 U.S. App. LEXIS 28858 (CA10 Oct. 20, 1997) (unreported)			
$3 million	Breach of fiduciary duty	Not discussed	$600,000
Cont'l Trend Res., Inc. v. OXY USA Inc., 101 F.3d 634 (CA10 1996)			
$30 million	Interference with contract	"[V]ery large"	$6 million
11th Circuit *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320 (CA11 1999)			
$45 million	Pollution	$10,000	$4.35 million
Federal Circuit *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 272 F.3d 1335 (CAFed 2001), *petition for cert. filed sub nom. DeKalb Genetics Corp. v. Bayer CropScience, S.A.*, No. 02-130 (U.S. July 24, 2002)			
$50 million	Fraud	Incarceration and fine at discretion of the court	$50 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Alabama			
Acceptance Ins. Co. v. Brown, 832 So. 2d 1 (Ala. 2001)			
$1.2 million	Insurance bad faith	Not discussed	$180,000
Orkin Exterminating Co. v. Jeter, 832 So. 2d 25 (Ala. 2001)			
$80 million	Fraud	$900,000	$2 million
Wal-Mart Stores, Inc. v. Goodman, 789 So. 2d 166 (Ala. 2000)			
$3 million	Malicious prosecution	Not discussed	$600,000
Prudential Ballard Realty Co., Inc. v. Weatherly, 792 So. 2d 1045 (Ala. 2000)			
$2.5 million	Real estate fraud	Not discussed	$750,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Lance, Inc. v. Ramanauskas, 731 So. 2d 1204 (Ala. 1999)			
$13 million	Wrongful death	Disregarded because fines not sought or imposed	$4 million
McKowan v. Bentley, 773 So. 2d 990 (Ala. 1999)			
$2 million	Wrongful death	None; guidepost disregarded because no penalties found	$2 million
Union Sec. Life Ins. Co. v. Crocker, 709 So. 2d 1118 (Ala. 1997)			
$2 million	Fraud	$2,000; disregarded because too low	$1 million
Ford Motor Co. v. Sperau, 708 So. 2d 111 (Ala. 1997)			
$6 million	Fraud	$2,000; disregarded because too low	$1.79 million
Cherokee Elec. Coop. v. Cochran, 706 So. 2d 1188 (Ala. 1997)			
$3 million	Wrongful death	None; guidepost disregarded because no penalties found	$3 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Am. Pioneer Life Ins. Co. v. Williamson, 704 So. 2d 1361 (Ala. 1997)			
$2 million	Fraud	Not discussed	$750,000
Talent Tree Pers. Servs., Inc. v. Fleenor, 703 So. 2d 917 (Ala. 1997)			
$3 million	Fraud	2 to 20 years in prison	$1.5 million
Life Ins. Co. of Ga. v. Johnson, 725 So. 2d 934 (Ala. 1998)			
$15 million	Fraud	$1,000; disregarded because too low	$3 million
BMW of N. Am., Inc. v. Gore, 701 So. 2d 507 (Ala. 1997)			
$4 million	Fraud	$2,000; disregarded because too low	$50,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Foremost Ins. Co. v. Parham, 693 So. 2d 409 (Ala. 1997)			
$4.5 million $3 million $4.5 million $3 million	Fraud	$1,000	$114,500 $60,500 $112,500 $60,500
Arkansas *Arrow Int'l, Inc. v. Sparks*, 2003 Ark. App. LEXIS 107 (Feb. 12, 2003) (unreported)			
$4 million	Wrongful death	Not discussed	$4 million
Edwards v. Stills, 984 S.W.2d 366 (Ark. 1998)			
$1.5 million	Assault, battery, false imprisonment, outrage	Imprisonment for life	$1.5 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
California			
Romo v. Ford Motor Co., 122 Cal. Rptr. 2d 139 (Ct. App. 2002), *petition for cert. filed*, No. 02-1097 (U.S. Jan 21, 2003)			
$290 million	Products liability (death)	$10,000 or imprisonment; disregarded as inapplicable to corporation	$290 million
Henley v. Philip Morris, Inc., 2003 Cal. App. Unpub. LEXIS 2699 (Mar. 19, 2002) (unreported)			
$50 million	Products liability, fraud	$6,000 fine per offense; possible total of $6.6 million	$25 million
Earnest v. Truck Ins. Exch., 2002 Cal. App. Unpub. LEXIS 10976 (Nov. 26, 2002) (unreported)			
$30 million	Insurance bad faith	Not discussed	$3 million
Tosco Corp. v. N.H. Ins. Co., 2002 Cal. App. Unpub. LEXIS 10077 (Oct. 30, 2002) (unreported)			
$18.2 million	Insurance bad faith	$10,000 or $55,000 or suspension of license	$4.6 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Textron Fin. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 2002 Cal. App. Unpub. LEXIS 6131 (June 28, 2002) (unreported), *petition for cert. filed*, 02-966 (U.S. Dec. 20, 2002)			
$10 million	Insurance bad faith	$10,000 or $55,000	$1.7 million
Friedman v. Royal Maccabees Life Ins. Co., 2002 Cal. App. Unpub. LEXIS 1701 (May 28, 2002) (unreported)			
$7 million	Insurance bad faith	$10,000 or $55,000 or imprisonment	$7 million
State Comp. Ins. Fund. v. WPS, Inc., 2001 Cal. App. Unpub. LEXIS 2485 (Oct. 22, 2001) (unreported)			
$3 million	Fraud	Not discussed	$3 million
Simon v. San Paolo U.S. Holding Co., 2001 Cal. App. Unpub. LEXIS 1860 (Nov. 7, 2001) (unreported)			
$1.7 million	Fraud	$2,500 or imprisonment	$1.7 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Notrica v. State Comp. Ins. Fund, 83 Cal. Rptr. 2d 89 (Ct. App. 1999)			
$20 million	Insurance bad faith	Not discussed	$5 million
Florida *Langmead v. Admiral Cruises, Inc.*, 696 So. 2d 1189 (Fla. Dist. Ct. App. 1997)			
$3.5 million	Personal injury (minor injury to eye)	None; treated as mitigating factor	None
Owens-Corning Fiberglas Corp. v. Rivera, 683 So. 2d 154 (Fla. Dist. Ct. App. 1996)			
$1.5 million	Products liability (asbestosis)	Not discussed	$1.5 million
Georgia *Time Warner Entm't Co. v. Six Flags Over Ga.*, 563 S.E.2d 178 (Ga. Ct. App. 2002), *petition for cert. filed*, No. 02-978 (U.S. Dec.23, 2002)			
$257 million	Breach of fiduciary duty	Double or treble the amount of harm caused	$257 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Bibb Distrib. Co. v. Stewart, 519 S.E.2d 455 (Ga. Ct. App. 1999)			
$12.5 million	Forgery, theft, conversion	Not discussed	$12.5 million
Idaho *Walston v. Monumental Life Ins. Co.*, 923 P.2d 456 (Idaho 1996)			
$10 million	Fraud, insurance bad faith	Not discussed	$3.2 million
Illinois *O'Neill v. Gallant Ins. Co.*, 769 N.E.2d 100 (Ill. App. Ct. 2002)			
$2.3 million	Insurance bad faith	Not discussed	$2.3 million
Indiana *Ford Motor Co. v. Ammerman*, 705 N.E.2d 539 (Ind. Ct. App. 1999)			
Two awards of $29 million	Products liability	None; guidepost disregarded because no penalties found	Two awards of $6.9 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Mich. Mut. Ins. Co. v. Sports, Inc., 698 N.E.2d 834 (Ind. Ct. App. 1998)			
$1 million	Insurance bad faith	$200,000	$1 million
Iowa *Wilson v. IBP, Inc.*, 558 N.W.2d 132 (Iowa 1996)			
$15 million	Defamation, breach of fiduciary duty	Not discussed	$2 million
Kentucky *Sand Hill Energy, Inc. v. Ford Motor Co.*, 83 S.W.3d 483 (Ky. 2002), *petition for cert. filed sub nom. Ford Motor Co. v. Estate of Tommy Smith*, No. 02-1096 (U.S. Jan. 21, 2002)			
$20 million	Products liability (death)	Not discussed	$15 million
Ky. Farm Bureau Mut. Ins. Co. v. Rodgers, 2002 Ky. App. LEXIS 1922 (Sept. 13, 2002) (unreported)			
$1 million	Insurance bad faith	Suspension or revocation of license	$1 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Louisiana *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d 364 (La. Ct. App. 2001)			
$2.5 billion	Mishandling of toxic substance	$1 million fine	$850 million
Maine *Harris v. Soley*, 756 A.2d 499 (Me. 2000)			
$1 million	Int. infliction of emot. distress, conversion	Not discussed	$1 million
Maryland *Bowden v. Caldor, Inc.*, 710 A.2d 267 (Md. 1998)			
$9 million	Malicious prosecution, defamation, false imprisonment	$1 million (maximum fine authorized by any Md. law)	Remittitur reversed & remanded

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Michigan			
Abramczyk v. Southgate, 2002 Mich. App. LEXIS 530 (Apr. 9, 2002) (unreported)			
$19.25 million	Retaliation against whistleblower	Existence of statutory penalties discussed, but amount not mentioned	$1.75 million
Mississippi			
Cooper Tire & Rubber Co. v. Tuckier, 826 So. 2d 679 (Miss. 2002)			
$3 million	Products liability (death)	Not discussed	$3 million
MIC Life Ins. Co. v. Hicks, 825 So. 2d 616 (Miss. 2002)			
$6 million	Breach of fiduciary duty	$5,000	Reversed & remanded
Paracelsus Health Care Corp. v. Willard, 754 So. 2d 437 (Miss. 1999)			
$1.5 million $1.5 million	Wrongful termination	None; guidepost disregarded because no penalties found	$1.5 million $1.5 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
State Farm Mut. Auto. Ins. Co. v. Grimes, 722 So. 2d 637 (Miss. 1998)			
$1.25 million	Insurance bad faith	Not discussed	$1.25 million
Missouri *Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575 (Mo. Ct. App. 2001)			
$1 million	Sexual battery	Not discussed	$1 million
Letz v. Turbomeca Engine Corp., 975 S.W.2d 155 (Mo. Ct. App. 1997)			
$67.5 million	Wrongful death	Not discussed	$26.5 million
Barnett v. La Societe Anonyme Turbomeca Fr., 963 S.W.2d 639 (Mo. Ct. App. 1997)			
$175 million	Wrongful death	Not discussed	$26.5 million

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Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Nevada *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043 (Nev. 2000)			
$6 million	Conversion	Not discussed	$6 million
New Mexico *Aken v. Plains Elec. Generation & Transmission Coop., Inc.*, 49 P.3d 662 (N.M. 2002)			
$1.75 million $1 million	Wrongful termination, defamation	$70,000 or $300,000 fines disregarded as not helpful; possibility of incarceration cited as basis for affirming	$1.75 million $300,000
Allsup's Convenience Stores, Inc. v. N. River Ins. Co., 976 P.2d 1 (N.M. 1998)			
$4 million $500,000	Insurance bad faith	Revocation of license	$4 million $500,000
Ohio *Dardinger v. Anthem Blue Cross & Blue Shield*, 781 N.E.2d 121 (Ohio 2002)			
$49 million	Insurance bad faith	$3,500 and loss of business license	$30 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Wightman v. Consol Rail Corp., 715 N.E.2d 546 (Ohio 1999)			
$25 million	Wrongful death	Prosecution for manslaughter	$15 million
Williams v. Aetna Fin. Co., 700 N.E.2d 859 (Ohio 1998)			
$1.5 million	Fraud	Not discussed	$1.5 million
Oregon *Parrott v. Carr Chevrolet, Inc.*, 17 P.3d 473 (Or. 2001)			
$1 million	Unlawful trade practices	Loss of business license and fine up to $25,000	$1 million
Lakin v. Senco Prods., Inc., 987 P.2d 463 (Or. 1999)			
$4 million	Products liability (brain damage and paralysis)	Not discussed	$4 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Williams v. Philip Morris Inc., 48 P.3d 824 (Or. Ct. App. 2002)			
$79.5 million	Fraud	Imprisonment; disregarded as inapplicable to corporation	$79.5 million
Bocci v. Key Pharm., Inc., 35 P.3d 1106 (Or. Ct. App. 2001), *petition for cert. filed*, No. 02-342 (U.S. Aug. 30, 2002)			
$35 million $22 million	Products liability (brain damage)	Not discussed	$35 million $22 million
Waddill v. Anchor Hocking, Inc., 27 P.3d 1092 (Or. Ct. App. 2001), *petition for cert. filed*, No. 02-370 (U.S. Sept. 3, 2002)			
$1 million	Products liability (cuts on arms and wrists)	Disregarded because fines not sought or imposed	$1 million
Jensen v. Medley, 11 P.3d 678 (Or. Ct. App. 2000), *review granted*, 52 P.3d 436 (Or. 2002)			
$1.25 million	Retaliation against whistleblower	$1,000 and one year in prison	$175,000

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
MacCrone v. Edwards Ctr., Inc., 980 P.2d 1156 (Or. Ct. App. 1999) (en banc)			
$1.25 million	Intentional infliction of emotional distress	$7,000 and 18 months in prison	$1.25 million
Axen v. Am. Home Prods. Corp., 974 P.2d 224 (Or. Ct. App. 1999)			
$20 million	Products liability (blindness)	$60,000 and injunction against future sales	$20 million
Pennsylvania *Pioneer Commercial Funding Corp. v. Am. Fin. Mortgage Corp.*, 797 A.2d 269 (Pa. Super. Ct. 2002)			
$337.5 million	Conversion	Not discussed	Vacated & remanded
South Carolina *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 2003 S.C. App. LEXIS 17 (Feb. 3, 2003) (unreported)			
$1.57 million	Interference with contract	Not discussed	$1.57 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
Welch v. Epstein, 536 S.E.2d 408 (S.C. Ct. App. 2000)			
$3.9 million	Medical malpractice (death)	Not discussed	$3.9 million
Hundley v. Rite Aid of S. C., Inc., 529 S.E.2d 45 (S.C. Ct. App. 2000)			
$10 million $1 million	Pharmacist malpractice (brain damage)	$500 or 18 month imprisonment plus revocation of license	$10 million $1 million
South Dakota *Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493 (S.D. 1997)			
$4.8 million	Fraud	$10,000 and 10 years in prison; disregarded because no charges sought	$1 million
Texas *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35 (Tex. 1998)			
$4.35 million	Products liability (asbestosis)	None; guidepost disregarded because no penalties found	$3.7 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
N. Am. Refractory Co. v. Easter, 988 S.W.2d 904 (Tex. App. 1999)			
$1.5 million	Products liability (asbestosis)	None; guidepost disregarded because no penalties found	$1.3 million
Harrison v. Querner, 1999 Tex. App. LEXIS 8914 (Nov. 30 1999) (unreported)			
$1 million	Fraud	Not discussed	$1 million
Utah *Campbell v. State Farm Mut. Auto. Ins. Co.*, 2001 UT 89, *cert. granted*, 122 S. Ct. 2326 (U.S. June 3, 2002) (No. 01-1289)			
$145 million	Insurance bad faith	$10,000 or loss of business license or disgorgement and treble damages	$145 million

Punitive Damage Verdict(s)	Nature of Conduct	Comparable Statutory Penalties, If Any, Revealed By Opinion	Final Punitive Damages
West Virginia *Vandevender v. Sheetz, Inc.*, 490 S.E.2d 678 (W. Va. 1997)			
$1.575 million $1.124 million	Unlawful termination, retaliation	None; guidepost disregarded because no penalties found	$1.109 million $1.124 million
Wisconsin *Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 641 N.W.2d 504 (Wisc. Ct. App. 2002), *rev. granted*, 653 N.W.2d 888 (Wis. 2002)			
$3.5 million	Insurance bad faith	None; guidepost disregarded because no penalties found	$3.5 million